

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

BOBBY FRANCIS LOWRY,

Petitioner,

vs.

CAPTAIN HILDENSTAB;
ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondents.

Cause No. CV 21-89-H-SEH

ORDER

On October 29, 2021, state pro se petitioner Bobby Francis Lowry filed a Petition Under 28 U.S.C. § 225 for Writ of Habeas Corpus¹ and a Motion to Proceed in Forma Pauperis.²

I. Motion to Proceed in Forma Pauperis

Lowry has failed to provide an account statement with the Motion to Proceed in Forma Pauperis.³ The motion will nevertheless be granted.⁴

¹ See Doc. 1 at 8. Under the “prison mailbox rule” a prisoner’s federal habeas petition is deemed filed “at the time [it is] delivered . . . to the prison authorities for forwarding to the court clerk.” *Houston v. Lack*, 487 U.S. 266, 276 (1988).

² Doc. 2

³ Doc. 2.

⁴ The Court takes judicial notice that Lowry has been granted in forma pauperis status in other matters. See, e.g., Or., *Lowry v. Salmonsén*, No. CV-18-106-H-BMM-JTJ (D. Mont. Jan 16, 2019), Doc. 3; Or., *Lowry v. Guyer*, No. CV-19-40-H-BMM-JTJ (D. Mont. June 16, 2019), Doc. 3; and Or., *Lowry v. Hildenstab*, No. CV-21-76-H-SHE (D. Mont. Oct. 22, 2021), Doc. 4.

II. Petition 28 U.S.C. § 2254 for Writ of Habeas Corpus

Lowry is currently serving a sentence for Promotion of Prostitution, Theft, and Partner Family Member Assault.⁵ He was previously released on parole, but is now detained for violation of parole.⁶

He now asserts his current incarceration violates his right to presumption of innocence and his right to due process.⁷ Similar claims were unsuccessfully litigated before the Montana Supreme Court.⁸

This Court does not serve as an appellate tribunal to review errors allegedly committed by a state court.⁹ Lowry's request to review a Montana Supreme Court disposition on state law issues is improper.¹⁰ The claims asserted are legally frivolous, fail to state a basis upon which relief may be granted, and must be dismissed.¹¹

⁵ Doc. 1 at 2–3.

⁶ Doc. 1 at 4.

⁷ Doc. 1 at 4–5.

⁸ See *Lowry v. Dutton*, OP 21-0211, 2021 WL 2105488 (Mont. May 25, 2021).

⁹ *MacKay v. Pfeil*, 827 F. 2d 540, 543 (9th Cir. 1987); see also *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296 (1970) (“lower federal courts possess no power whatever to sit in direct review of state court decisions”).

¹⁰ See *Bradshaw v. Richey*, 546 U.D. 74, 76 (2005) (A state court's interpretation of state law is binding on a federal habeas court); *Hendricks v. Zenon*, 993 F. 2d 664, 674 (9th Cir. 1993) (claim exclusively concerned with state law not cognizable in federal habeas); *Mendez v. Small*, 298 F. 3d 1154, 1158 (9th Cir. 2002) (“[a] state court has the last word on interpretation of state law”) (citations omitted); see also *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991) (“we reemphasize that it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions”); *Bonin v. Calderon*, 59 F. 3d 815, 841 (9th Cir. 1995) (violation of a “state law right does not warrant habeas corpus relief”); *Lewis v. Jeffers*, 497 U.S. 764, 765 (1990) (“federal habeas corpus relief does not lie for errors of state law”).

¹¹ 28 U.S.C. § 1915A(b)(1), (2).

III. Certificate of Appealability

Lowry has made no substantial showing of the denial of a constitutional right.¹² Issues have not been presented that are adequate to warrant encouragement to proceed further. No certificate of appealability will be authorized.

ORDERED:

1. Lowry's Motion to Proceed in Forma Pauperis¹³ is GRANTED. The Clerk of Court is directed to waive payment of the filing fee.
2. Lowry's Petition¹⁴ is DISMISSED with prejudice.
3. The Clerk of Court is directed to enter, by separate document, a judgment in favor of Respondents and against Petitioner.
4. A certificate of appealability is DENIED.

DATED this 7th day of January, 2022.


SAM E. HADDON
United States District Judge

¹² 28 U.S.C. § 2253(c)(2).

¹³ Doc. 2.

¹⁴ Doc. 1.